



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-802]

Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony with Final Results of Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On February 19, 2019, the United States Court of International Trade (CIT or Court) issued its final judgment, sustaining the Department of Commerce's (Commerce's) final remand results pertaining to the tenth administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (Vietnam) covering the period of review (POR) of February 1, 2014, through January 31, 2015. Commerce is notifying the public that the final judgment in this case is not in harmony with the final results of the tenth administrative review, and that Commerce is amending the final results with respect to the surrogate value used to value frozen shrimp in the administrative review, which results in amended antidumping duties.

DATES: Applicable March 1, 2019.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-6905.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 2015, Commerce initiated an administrative review of 195 producers and exporters of certain frozen warmwater shrimp from Vietnam for the period February 1, 2014, through January 31, 2015.¹ Commerce individually examined Soc Trang Seafood Joint Stock Company, also known as Stapimex.² We issued the *Final Results* on September 12, 2016.³

Because Vietnam continues to be a non-market economy (NME) country,⁴ pursuant to section 773(c)(1) of the Act, we based normal value on the NME producer's factors of production (FOPs), valued in a surrogate market economy country considered to be appropriate.⁵ Upon evaluating the surrogate country selection criteria, including the availability of surrogate value data on the record,⁶ we selected Bangladesh over other countries primarily due to data availability considerations.⁷ No interested parties challenged Commerce's surrogate country selection.

In the *Final Results*, among other issues, we addressed arguments regarding the frozen shrimp surrogate value and our denial of byproduct offsets for packing materials claimed as

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 18202 (April 3, 2015) (*Initiation Notice*). While there were 195 individual names upon which we initiated an administrative review, the number of actual companies initiated upon is 99, due to variations of names requested by multiple interested parties and the groupings of companies that we have previously collapsed.

² See Memorandum, "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of Respondents for Individual Examination," dated April 29, 2015.

³ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014–2015*, 81 FR 62717 (September 12, 2016) (*Final Results*) and accompanying Issues and Decision Memorandum.

⁴ See section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the Act).

⁵ See sections 773(c)(1) and (4) of the Act.

⁶ See *Final Results* at Comment 2, citing to *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review; 2014–2015*, 81 FR 12702 (March 10, 2016) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum at 14-17.

⁷ *Id.*

byproducts. We made no changes in the *Final Results* regarding these two issues.⁸ With respect to the frozen shrimp surrogate value, we explained that “{b}ecause our strong preference is to value all inputs from a single surrogate country, we valued frozen shrimp using the Bangladeshi UN Comtrade data.”⁹ We further explained that “{a}lthough the Indian GTA {data} are contemporaneous, whereas Bangladeshi UN Comtrade data are not, this consideration does not outweigh our preference to remain within the primary surrogate country.”¹⁰

After the conclusion of the administrative review, several interested parties challenged various determinations made in the *Final Results*. The Court affirmed all the challenged determinations, but remanded two issues for further explanation or reconsideration.¹¹ Specifically, in the *Remand Opinion and Order*, the Court ordered Commerce to reconsider or further explain: 1) its reliance on Bangladeshi UN Comtrade data to value purchased frozen shrimp using Harmonized Tariff Schedule (HTS) 0306.13 from among the other frozen shrimp surrogate value data on the record, namely the India Global Trade Atlas (GTA) surrogate value data under HTS 0306.17; and 2) its denial of a byproduct offset for the claimed byproduct related to “packaging.”¹²

In the Remand Redetermination, and consistent with the *Remand Opinion and Order*, Commerce reconsidered the surrogate value used to value frozen shrimp and recalculated the

⁸ See *Final Results* at Comment 2 (“Fresh unprocessed shrimp is a different input from frozen semi-processed shrimp, which we consider to be an intermediate, processed input. Accordingly, these inputs must be reported separately and valued appropriately, which in this instance means applying different SVs to each... We continue to value frozen shrimp using Bangladeshi UN Comtrade data, as it satisfies our surrogate value selection criteria and is from the primary surrogate country”) and Comment 8 (“consistent with our established practice, packing for direct materials, which are discarded (or sold as scrap) prior to entering the production process for subject merchandise, do not qualify as ‘byproducts’”).

⁹ *Id.* at Comment 2B.

¹⁰ *Id.*

¹¹ See *Soc Trang Seafood Joint Stock Company and Ca Mau Seafood Joint Stock Company v. United States*, Consol. Court No. 16-00205, Slip Op. 18-75 (June 21, 2018) (*Remand Opinion and Order*).

¹² *Id.* at 40.

sole mandatory respondent's dumping margin accordingly.¹³ Further, as directed by the Court, we explained our denial of the mandatory respondent's request for an offset of packing materials claimed as byproducts to the cost of manufacturing in determining normal value.¹⁴ The Court sustained our Remand Redetermination on both issues.¹⁵

In the *Final Results*, we calculated a 4.78 percent weighted-average margin for the sole mandatory respondent Stapimex.¹⁶ Based on our remand recalculations, the final margin for Stapimex in this administrative review changes from 4.78 percent to 0.71 percent.¹⁷

Timken Notice

In its decision in *Timken*,¹⁸ as clarified by *Diamond Sawblades*,¹⁹ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Act, Commerce must publish a notice of a court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's February 19, 2019, *Final Judgment* sustaining Commerce's Remand Redetermination with respect to using the India GTA surrogate value data under HTS 0306.17 to value frozen shrimp constitutes a final decision of that court that is not in harmony with the *Final Results*.

This notice is published in fulfillment of the publication requirement of *Timken*. Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise at issue in the Remand Redetermination pending expiration of the period of appeal or, if appealed, a final and conclusive court decision.

¹³ See Final Results of Redetermination Pursuant to Court Remand, dated September 18, 2018, at 6-9 and 13-20 (Remand Redetermination); available at <https://enforcement.trade.gov/remands/18-75.pdf>.

¹⁴ *Id.* at 9-13 and 20-24.

¹⁵ See *Soc Trang Seafood Joint Stock Company and Ca Mau Seafood Joint Stock Company v. United States*, Consol. Court No. 16-00205, Slip Op. 19-23 (February 19, 2019) (*Final Judgment*) at 12.

¹⁶ See *Final Results*, 81 FR at 62718.

¹⁷ See Remand Redetermination at 25.

¹⁸ See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

¹⁹ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Amended Final Results

Because there is now a final court decision with respect to this case,²⁰ Commerce is amending the *Final Results*. Based on the Remand Redetermination, as affirmed by the Court on February 19, 2019, the revised weighted-average dumping margin for Stapimex, for the period February 1, 2014, through January 31, 2015, is 0.71 percent. Further, as the rate assigned to companies that qualified for a separate rate in this review was based on Stapimex's calculated rate,²¹ we will accordingly apply Stapimex's revised margin as the rate applicable to the 27 separate-rate recipients which are parties to this litigation.

In the event that the CIT's ruling is not appealed or, if appealed, is upheld by a final and conclusive court decision, Commerce will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise based on: 1) the non-public importer-specific assessment rates recalculated in the Remand Redetermination for Stapimex²² and 2) the above-noted 0.71 percent revised rate for the non-individually examined respondents that received a separate rate in the *Final Results* and are subject to this litigation.

²⁰ See *Final Judgement*.

²¹ See *Final Results* and accompanying Issues and Decision Memorandum at Comment 7, as affirmed in *Remand Opinion and Order*.

²² See Remand Redetermination, citing to Memorandum to the File, re: "Remand Redetermination—Revised Final Results Calculations," dated August 6, 2018, at Attachment 2, which contains the SAS Output generated for Stapimex, and displays the revised, non-public importer-specific assessment rates for all importers that Stapimex reported in its questionnaire responses (see Stapimex's Section C Questionnaire Response, dated June 22, 2015, at 11-12 under ACCESS Barcode 3285551-01).

Cash Deposit Requirements

Mandatory Respondent

Because there have been no subsequent administrative reviews completed for mandatory respondent, Stapimex,²³ the recalculated cash deposit rate of 0.71 percent will be the rate established for Stapimex in these amended final results.

Separate-Rate Companies

With respect to the 27 non-individually examined companies that qualified for a separate rate in the tenth administrative review and are subject to this litigation, there have been subsequent administrative reviews completed for the exporters listed below; thus, the cash deposit rate for these exporters will remain the rate established in the most recently-completed administrative review in which they received a cash deposit rate:

Exporter	Cash Deposit Rate in Effect (percent)	<i>Federal Register Notice</i>
Bac Lieu Fisheries Joint Stock Company	4.58	<i>AR12 Final Results</i> ²⁴
C.P. Vietnam Corporation	4.58	<i>AR12 Final Results</i>
Cadovimex Seafood Import-Export and Processing Joint Stock Company	4.58	<i>AR12 Final Results</i>
Camau Frozen Seafood Processing Import Export Corporation, aka Camau Seafood Factory No. 4	4.58	<i>AR12 Final Results</i>
Can Tho Import Export Fishery Limited Company	4.58	<i>AR12 Final Results</i>
Camau Seafood Processing and Service Joint Stock Corporation	4.58	<i>AR12 Final Results</i>
Cuu Long Seaproducts Company	4.58	<i>AR12 Final</i>

²³ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Partial Rescission of Antidumping Duty Administrative Review; 2015–2016*, 81 FR 46047 (July 15, 2016) (*AR11 Partial Rescission*) at Appendix I, and *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Partial Rescission of Antidumping Duty Administrative Review; 2016–2017*, 82 FR 37563 (August 11, 2017) (*AR12 Partial Rescission*).

²⁴ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2016-2017*, 83 FR 46704 (September 14, 2018) (*AR12 Final Results*).

		<i>Results</i>
Investment Commerce Fisheries Corporation	4.58	<i>AR12 Final Results</i>
Kim Anh Company Limited, aka Kim Anh Co., Ltd.	4.58	<i>AR12 Final Results</i>
Minh Hai Export Frozen Seafood Processing Joint- Stock Company	4.58	<i>AR12 Final Results</i>
Minh Hai Joint-Stock Seafoods Processing Company	4.58	<i>AR12 Final Results</i>
Ngoc Tri Seafood Joint Stock Company	4.58	<i>AR12 Final Results</i>
Nha Trang Fisheries Joint Stock Company	25.76 ²⁵	<i>AR12 Final Results</i>
Nha Trang Seafoods Group: Nha Trang Seaproduct Company, aka NT Seafoods Corporation, aka Nha Trang Seafoods – F89 Joint Stock Company, aka NTSF Seafoods Joint Stock Company	4.58	<i>AR12 Final Results</i>
Phuong Nam Foodstuff Corp	4.58	<i>AR12 Final Results</i>
Sao Ta Foods Joint Stock Company, aka Fimex VN, aka Saota Seafood Factory	4.58	<i>AR12 Final Results</i>
Seaprimexco Vietnam	4.58	<i>AR12 Final Results</i>
Thong Thuan Company Limited, aka T&T Co., Ltd	4.58	<i>AR12 Final Results</i>
Thuan Phuoc Seafoods and Trading Corporation	4.58	<i>AR12 Final Results</i>
UTXI Aquatic Products Processing Corporation	4.58	<i>AR12 Final Results</i>
Viet Foods Co., Ltd.	4.58	<i>AR12 Final Results</i>
Viet Hai Seafood Co., Ltd., aka Vietnam Fish One Co., Ltd.	4.58	<i>AR12 Final Results</i>
Vietnam Clean Seafood Corporation	4.58	<i>AR12 Final Results</i>

With respect to the non-individually examined companies listed below that qualified for a separate rate in the tenth administrative review and are subject to this litigation, there have been

²⁵ See *AR12 Final Results* at Appendix II.

either: 1) no subsequent administrative reviews completed for these exporters because they were rescinded from review,²⁶ or 2) these exporters certified they had no shipments in subsequent reviews;²⁷ thus, the cash deposit rate of 0.71 percent, as recalculated in the Remand Redetermination, applies to these companies:

Exporter	Cash Deposit Rate in Effect (percent)
Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd.	0.71
Viet I-Mei Frozen Foods Co., Ltd.	0.71
Quang Minh Seafood Co., Ltd.	0.71
Trong Nhan Seafood Company Limited	0.71

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: March 1, 2019.

Gary Taverman,
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance.

²⁶ In addition to Stapimex, as noted above, both Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd. and Viet I-Mei Frozen Foods Co., Ltd. were rescinded from the eleventh and twelfth antidumping duty administrative reviews. See *AR11 Partial Rescission* at Appendix I and *AR12 Partial Rescission*, 82 FR at 37563.

²⁷ Quang Minh Seafood Co., Ltd. and Trong Nhan Seafood Company Limited both certified they had no shipments of subject merchandise in the eleventh and twelfth administrative reviews, with no information on those records contradicting their certifications. Neither of these companies received revised cash deposit rates in the final results of the eleventh and twelfth administrative reviews. See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2015–2016*, 82 FR 11431-11432 (February 23, 2017) and *AR12 Final Results*, 83 FR at 46704, respectively.

